

1  
2  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 GARY R. CONWAY,

Case No. 3:19-cv-00019-MMD-CLB

7 Plaintiff,

8 v.

*Related case*

9 NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Case No. 3:19-cv-00128-MMD-CLB

10 Defendants.

ORDER

11  
12 On March 2, 2020, the Court ordered Plaintiff Gary R. Conway to show cause  
13 (“OSC”) why this case should not be dismissed as duplicative of claims encompassed in  
14 Case No. 3:19-cv-00128-MMD-CLB (“Second Case”).<sup>1</sup> (ECF No. 31.) The OSC detailed  
15 the differences between this case and the Second Case so the Court will not repeat them  
16 here. Most importantly, Plaintiff has responded to the OSC and agrees that the single  
17 claim in this case is duplicative of the claim for Eighth Amendment deliberate indifference  
18 to a serious medical need asserted in the Second Case against more Defendants. (ECF  
19 No. 35 at 2.)<sup>2</sup> It appears then that the only meaningful difference pertinent to the dismissal  
20 of this action is that upon screening in this case Plaintiff was permitted to further amend  
21 his complaint to add any John Doe officials at NDOC as potential defendants once he  
22 discovers their true identities. (ECF No. 5 at 7.) However, the difference is resolved by the  
23 Court permitting amendment in the Second Case. The Court therefore sees no reason

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup>The OSC was erroneously titled “Screening Order.”

27 <sup>2</sup>To the extent Plaintiff notes that the claims were alleged against two separate  
28 entities—the Nevada Department of Corrections (“NDOC”) and Esmeralda County  
Sheriff’s Office—the Court notes that these entities were dismissed upon screening.  
NDOC was dismissed with prejudice (ECF No. 5 at 7) and the Court further explains the  
dismissal of the sheriff’s office below.

1 why this case should not be dismissed in an effort to control its docket as explained in the  
2 OSC.

3 Separately, in response to the OSC, Plaintiff expresses his belief that Defendant  
4 Esmeralda County Sheriff's Office ("ECESO") should be added back as a Defendant to his  
5 lawsuit. (ECF No. 35 at 2.) The claim against the ECESO for inadequate medical care under  
6 the Fourteenth Amendment's Due Process Clause was dismissed *without prejudice* in the  
7 Second Case because Plaintiff did not allege that his constitutional deprivations were a  
8 product of a policy or custom of the ECESO. (See 3:19-cv-00128-MMD-CLB (ECF No. 6 at  
9 7, 10).) Nothing in Plaintiff's response to the OSC suggests that Plaintiff could allege that  
10 his claim(s) against the ECESO is grounded on a policy or custom. Therefore, there is no  
11 basis to permit further amendment to add ECESO back into Plaintiff's lawsuit.

12 It is therefore ordered that this case is dismissed as duplicative of Case No. 3:19-  
13 cv-00128-MMD-CLB.

14 It is further ordered that to the extent Plaintiff may have identified further John Does  
15 as defendants to the claim for Eighth Amendment deliberate indifference to a serious  
16 medical need he is permitted leave to amend the complaint in Case No. 3:19-cv-00128-  
17 MMD-CLB to add them. Plaintiff will have 15 days from when this order is filed to make  
18 any such amendments. Failure to amend within this timeframe will result in Case No. 3:19-  
19 cv-128-MMD-CLB proceeding as is.

20 The Clerk of the Court is directed to close Case No. 3:19-cv-00019-MMD-CLB.

21 The Clerk of the Court is further directed to also file this order in Case No. 3:19-cv-  
22 00128-MMD-CLB.

23 DATED THIS 13<sup>th</sup> day of April 2020.

24  
25 

26 MIRANDA M. DU  
27 CHIEF UNITED STATES DISTRICT JUDGE  
28